IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7975 of 1992

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T C - Petitioner(s)

Versus

JIVRAJBHAI B VIRPARA - Respondent(s)

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Appearance :

MR MD PANDYA for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 12/07/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award dated 15th May, 1991 passed by the Labour Court, Bhavnagar, in Reference [L.C.B.] No. 58 of 1990, whereby

the Labour Court has directed the petitioner Corporation to reinstate the respondent workman with continuity in service and without back wages.

2. The short facts of the case are that the respondent workman was working as a conductor with the petitioner Corporation. While the respondent workman was on duty, the bus was checked by the checking squad of the petitioner Corporation and they found certain irregularities in the issuance of tickets and collection of fares. Charge sheet was issued and department inquiry was held against the respondent workman. Since the charges levelled against the respondent workman were proved, he was dismissed from the service w.e.f.17th December, 1987.

2.1. Feeling aggrieved by the said order, the respondent workman preferred Departmental Appeal before the competent authority, which also came to be dismissed. Pursuant to the said order, the respondent workman raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The Labour Court after considering the case on merits, passed the impugned award. Hence, this petition.

3. Mr. Pandya learned advocate for the petitioner Corporation has contended that the Labour Court has committed an error of law in exercising the jurisdiction over the decision of the petitioner Corporation. He has submitted that the Labour Court cannot sit in appeal over the decision of the competent authority, when the charges levelled against the respondent workman were proved in the

departmental inquiry conducted against him.

3.1. He has further submitted that though the Labour Court found that the respondent workman had on 21 earlier occasions committed such mis-conducts, directed to reinstate the respondent workman in service.

4. I have heard the learned counsel for the parties and have perused the materials placed on record. The Labour Court has substituted the order of dismissal passed by the petitioner Corporation by reinstating the respondent workman with continuity in service, but without back wages. However, looking to the past conduct of the respondent workman and since the charge levelled against the respondent workman are proved, the Labour Court while substituting the order of dismissal ought to have imposed some penalty on the respondent workman. In my opinion, ends of justice would be met if a penalty of stoppage of three increments with future effect is imposed on the respondent workman.

5. For the foregoing reasons, the petitioner Corporation is directed to impose a penalty of stoppage of three increments with future effect on the respondent workman. It is further directed that the petitioner Corporation shall given the respondent workman all benefits from the date of publication of the award till he has been reinstated in service within a period of three months from the date of receipt of writ of this order. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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